

Local Government Employee-Management Relations Board E-Newsletter

2501 E. Sahara Avenue Suite 203 • Las Vegas • NV • 89104
www.emrb.nv.gov • emrb@business.nv.gov • (702) 486-4504

February 2015

Members of the Board

Philip E. Larson, Chairman

Brent C. Eckersley, Esq., Vice-Chairman

Sandra Masters, Board Member

Staff

Bruce K. Snyder, Commissioner

Marisu Romualdez Abellar,
Board Secretary

On the Horizon

The next meeting of the Board will be held on Tuesday, March 10th through Thursday, March 12th, in Las Vegas. The agenda for this meeting is being issued on March 3rd. At this meeting the Board will conduct a hearing for case A1-046111, Justin Simo v. Henderson Police Officers Association. Mr. Simo, while driving a department SWAT vehicle, totaled the vehicle and was ultimately terminated by the City of Henderson. He filed a complaint both against his employer and against his union, the latter for allegedly breaching its duty of fair representation when it failed to file a grievance over his termination. The Board previously dismissed the counts against the City.

Also in March the Board is scheduled to deliberate and decide on two cases heard in December and January. The first is A1-045847 through A1-045864 inclusive, Deborah Boland et al. v. SEIU, Local 1107. This case involves 18 physicians who allege that their union breached its duty of fair representation. The second case is A1-046108, LVCEA & Val Sharp v. City of Las Vegas. Sharp alleges that his discipline is invalid because he was acting in his union capacity during the events in question.

Recent Decisions

*Please note that these summaries are provided for informational purposes only and are not intended to substitute for the opinions of the Board. These summaries should not be cited to or regarded as legal authority. The EMRB will provide copies of the decisions upon request. The Board issued one notable decision in January:

Case No. A1-045735, International Brotherhood of Teamsters, Local 14 v. Clark County School District and Education Support Employees Association (Item 520Q). As mentioned in the article on the following page, the Board certified the results of a recently held runoff election. Like the first election, neither Teamsters Local 14 nor ESEA received a majority support from a majority of all the members of the bargaining unit (i.e., a majority of those eligible to vote). The Board then interpreted its rules as not requiring a second runoff election, but in its discretion it then ordered a second discretionary runoff election.

It further stated that it was obvious that the current standard, adopted in 2002, is incapable of answering whether any organization enjoys majority support. The Board then stated that a discretionary runoff election would be warranted if conducted under a standard likely to produce a meaningful result. Noting that prior to 2002 the Board had always used a "majority of the votes cast" standard, which had been used in a number of elections, the Board interpreted its rules as permitting the Board to infer majority support of the unit as a whole based upon a majority of the votes cast. The Board further noted that this "majority of the votes cast" standard is not only the standard in labor law, but is also the standard used in Nevada's elections in general. Finally, in ordering that the second discretionary runoff election be held under the "majority of the votes cast" standard, the Board called the "majority of the unit" standard, nicknamed the supermajority rule, a failed experiment incapable of any meaningful practical application.

Inside This Issue

- 1 On the Horizon** - Learn about our upcoming meetings
- 1-2 Recent Decisions** – Read about significant decisions just issued by the Board
- 2 Did You Know?**
- 2 Representation Election News** – Read about an election occurring now affecting Clark County School District employees
- 3 In the Queue** - See the cases that are waiting to be heard by the Board
- 3 Now in Effect** – Learn about improvements to our regulations

Recent Decisions (cont'd)

Case No. A1-046115, Daniel Woyciehowsky v. City of Sparks and Sparks Police Department (No item Number). A number of the cases filed with the EMRB also have a corresponding grievance that goes to arbitration. In such cases the EMRB generally places its case on hold until the arbitration is concluded. Then it determines whether to defer to the arbitrator's decision. This order is important as it states the standard for deferral as enunciated in City of Reno v. Reno Police Protective Association, 118 Nev. 889, 59 P.3d 1212 (2002). The Board will ordinarily defer to an arbitrator's decision if: (1) the arbitration proceedings were fair and regular; (2) the parties agreed to be bound; (3) the decision was not "clearly repugnant to the purpose and policies of the [Act]; (4) the contractual issue was factually parallel to the unfair labor practice issue; and (5) the arbitrator was presented with the facts relevant to resolving the [unfair labor practice]." The party desiring that the EMRB reject an arbitration award has the burden to show that one or more of these conditions for deferral were not met. By the way, in this case the Board did defer to the arbitrator and dismissed the complaint.

Did you know

that our law requires that the EMRB maintain a list of individuals willing to serve as a mediator and/or serve on a fact finding panel? Sometimes when local governments and employee organizations negotiate new collective bargaining agreements or changes to existing agreements those negotiations result in impasse. Our law provides ways to get past impasse. Please visit our website and look for the section in the lower-right hand corner of the home page called "Directories". Click on the Mediators/Fact Finders. This will bring you to a list of more than 20 individuals willing to assist you. Moreover, feel free to also use this list of individuals for your grievance mediation and arbitration needs. Each person lists his/her resume and fee schedule for your convenience. We plan on updating this list every year.

Representation Election News

As mentioned in last month's newsletter, the EMRB was in the process of conducting an election between the Education Support Employees Association (ESEA) and Teamsters Local 14 (Local 14) to determine which union was to represent the 11,258 support employees at the Clark County School District. These support employees include bus drivers, mechanics, clerical employees, kitchen help, teacher aides, custodians, etc.

The ballots were mailed to these employees on January 5th and the election culminated in the counting of the ballots on Tuesday, February 3rd. That day about 100 volunteers met at the Riviera Hotel and Casino at 7am and were able to finish the tallying of the ballots by 5pm. The final results show that ESEA received 1,498 votes while Teamsters received 3,692 votes. The Board certified the results of the election on February 12th, noting that no objections had been filed by either ESEA or Local 14 as to the conduct of the election. Moreover, the Clark County School District also did not file any objections to the conduct of the election.

Neither employee organization was declared the "winner" due to neither employee organization receiving a majority of the votes that could have been cast in this election which was held under the so-called supermajority rule as mandated by an order of the Nevada Supreme Court issued in 2009. That order states that the election just held was subject to a majority vote requirement, such that in order to prevail, an employee organization needed "to obtain support from a majority of all the members of the bargaining unit and not just a majority of those who vote."

ESEA is the incumbent bargaining agent and remained so for the duration of the election process. The Board held that the results of the recent election do not justify removing ESEA in favor of Local 14 under the so-called supermajority vote requirement. As such ESEA will continue to be the recognized bargaining agent. However, the Board also ordered a discretionary second runoff election, which will use a majority of the votes cast standard to determine the winner. For more information please read the Recent Decisions article on page 1.

In the Queue...

Once initial pleadings, including pre-hearing statements, have been filed with the EMRB and after any motions to dismiss or defer have been decided, then a case typically goes into a queue, waiting for the Board to decide whether to grant a hearing in the case or dismiss the complaint. Below is a description of the current queue:

On March 10-12 the Board will hear two A1-046111, Justin Simo v. Henderson Police Officers Association.

On April 7-9 the Board will hear A1-046116, David O'Leary v. Las Vegas Metropolitan Police Department.

Then on May 5-6 the Board will meet in Elko and hear A1-046068, Elko County Employees Association v. Elko County.

The Board will hear two cases in June: A1-046123, Nye County Law Enforcement Association v. Nye County and A1-046113, Education Support Employees Association and Police Officers Association of the Clark County School District v. Clark County School District.

The following cases are waiting for the Board to deliberate and decide on the status of the case, including, but not limited to, dismissal of the case or the granting of a hearing on the complaint. Please note that the order listed below is not necessarily the order in which the cases will be heard:

In Las Vegas:

A1-046127, Laws, Quick and Las Vegas Police Protective Association v. Las Vegas Metropolitan Police Department

A1-046128, City of Las Vegas v. Las Vegas Peace Officers Association

A1-046130, SEIU, Local 1107 v. Clark County

A1-046133, SEIU, Local 1107 v. Southern Nevada Regional Housing Authority

A1-046140, Sazer & Las Vegas Police Protective Association v. Las Vegas Metropolitan Police Department

Now in Effect... Electronic Filing and Other Changes

The agency's amendments to its regulations are now in effect! These changes do four things: (1) they allow for the electronic filing of documents; (2) for those wishing to still manually file documents, we only will require that the original be filed; (3) they allow the Commissioner to grant extensions of time to file certain documents in lieu of waiting for Board approval; and (4) they clarify the annual reporting requirements.

Any person wishing to electronically file documents will first need to register with the EMRB. This precaution is being taken to ensure that any documents received are from whom they purport to be. Since 99% of all documents are filed by attorneys or their staff we recently sent a registration packet to the attorneys on our mailing list. If you would like to register with us and did not receive a registration form (or cannot find it) please contact our office and we will immediately send you the form and help you get registered.

Anyone needing to file a stipulation to extend time to file a document is encouraged to call our office and talk with the Commissioner, who can explain the new process of expediting approval of your request.

"About the EMRB"

The Employee-Management Relations Board (EMRB), a Division of the Department of Business and Industry, fosters the collective bargaining process between local governments and their employee organizations (i.e., unions), provides support in the process, and resolves disputes between local governments, employee organizations, and individual employees as they arise.